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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,668	08/05/2003	Cullen F. Jennings	062891.1110	7154
7590 BAKER BOTTS L.L.P. 2001 Ross Avenue Dallas, TX 75201-2980		03/15/2007	EXAMINER YUN, EUGENE	
			ART UNIT 2618	PAPER NUMBER
			MAIL DATE 03/15/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/634,668	Applicant(s) JENNINGS, CULLEN F.	
	Examiner Eugene Yun	Art Unit 2618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see attached sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/5/2007 have been fully considered but they are not persuasive.

The applicant argues that the Bartkowiak reference does not teach "determining a set of particles each modeling a potential signal generated by a transmitter". The examiner understands and may even agree with the applicant's arguments to an extent. However, after careful consideration of the applicant's arguments, the limitation is believed by the examiner to not be worded clearly enough in order to match the applicant's arguments. The examiner believes that the limitation as currently worded still can be read on as a set of particles **each** modeling **one overall** potential signal. The examiner believes that the limitation needs to more clearly show the terms "individual potential signal" for "each individual particle" in order to overcome the Bartkowiak reference.

The applicant argues that the Bartkowiak reference does not teach "calculating a probability for each of the particles, the probability for a particle indicating likelihood of the potential signal modeled by the particle based upon the received signal". The above statement regarding each particle modeling a potential signal affects the arguments of this limitation. Because the examiner does not need to show that the Bartkowiak reference teaches "individual potential signal" modeled by "each individual particle", the response to arguments in the previous office action once again take place.

The applicant argues that the Bartkowiak reference does not teach "redistributing the particles within a space of potential signals that may be generated by the transmitter based upon the probabilities". Once again, the above statement regarding each particle modeling a potential signal affects the arguments of this limitation. Therefore, the examiner would like to reiterate that according to the claims, this limitation takes place before the selecting of the particles takes place. Therefore, it should be obvious to one skilled in the art, that the particles are redistributed and analyzed before a selection takes place. However, the cited passage (see col. 3, lines 40-55) also shows the process of analyzing all the energy calculations taking place before selection is made of the samples with the highest energy values. Therefore, the above function can also equate "redistributing the particles within a space of potential signals that may be generated by the transmitter based upon the probabilities". The support for this inherency argument is believed by the examiner to be supported in col. 10, lines 7-15.

For the above reasons, the examiner stands by his rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Yun whose telephone number is (571) 272-7860. The examiner can normally be reached on 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on (571)272-4177. The fax phone


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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Eugene Yun
Examiner
Art Unit 2618

EY


MATTHEW ANDERSON
SUPERVISORY PATENT EXAMINER